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October 5, 2006

Ms. Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, Massachusetts 02110

Re: *Investigation as to the propriety of proposed tariff, M.D.T.E. No. 1103, filed by Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid*, D.T.E. 06-75.

Dear Secretary Cottrell:

On August 31, 2006, Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid (together, "Company") filed a petition ("Petition") with the Department of Telecommunications and Energy ("Department"). The Company proposes to cancel its basic/default service cost reclassification adjustment provision, M.D.T.E. No. 1084, and implement a new basic/default service cost reclassification adjustment provision, M.D.T.E. No. 1103. The Company asks to reconcile: (1) the distribution charge credit approved in *Default Service Rates*, D.T.E. 03-88E (2005), with actual revenues credited through distribution rates; (2) the distribution charge default service adder approved in D.T.E. 03-88E with actual revenues collected through basic/default service rates; and (3) the amount of uncollectible expenses approved in D.T.E. 03-88E to be transferred from distribution rates to basic/default service rates with actual uncollectible expense. Also, the Company proposes to decrease distribution rates by the same amount as the basic/default service rate increase associated with the uncollectible expense. If the Department approves this tariff, a residential customer who consumes 500 kWh of electricity per month could see a $0.02 increase in his monthly bill. The proposed tariff has an effective date of November 1, 2006.

On September 18, 2006, the Department issued a notice opening an investigation into the propriety of the proposed tariff and requesting comments on the proposal. Pursuant to the Department's September 18 notice, the Attorney General submits this letter as his comments.

I. Background

On November 17, 2003, the Department opened an investigation, pursuant to G.L. c. 164 §§ 1A(a), 1B(d), and 220 C.M.R. § 11.04, into the costs distribution companies should include in default service rates. *Investigation by the D.T.E. on its Own Motion, pursuant to G.L. c. 164 §§ 1A(a), 1B(d); and 220 C.M.R. § 11.04, into the Costs That Should Be Included in Default Service Rates*, D.T.E. 03-88 (2003). Companies were to include in their Default Service certain types of costs previously included in the base distribution rates. *See Id*. The Department ordered separate investigations, requiring each Massachusetts distribution company, including the Company, to submit filings to comply with the Order. *See Id*.

On January 21, 2005, the Company and the Attorney General, among other parties, submitted an offer of settlement. Settlement Agreement, D.T.E. 03-88A-F (2005) ("Settlement"). The Settlement provides for a revenue neutral transfer of recovery of specified costs the Company incurs in providing default service from distribution rates to a surcharge on default service rates. Appendices to the Settlement itemize these costs, which are fixed until the next general distribution rate case. Settlement at ¶ 2.4. Alternatively, the Company may propose an adjustment of costs, which is subject to the Department's approval. *Id*. If the migration of customers from default service to competitive supply "increases to a significant level as compared to the level at the time the rate adjustments included in the Settlement Appendices are implemented… [rates] may be adjusted to reflect the decline in the default service customers." *Id*. The Settlement also provides that, to ensure cost recovery is revenue neutral, the Company annually reconcile any differences between sales volumes and projected volumes. Settlement at ¶ 2.6. The Company cannot reconcile to the level of costs it actually incurs. *Id*. Finally, the Settlement provides that the Company shall annually propose adjustments to the default service rates and distribution rates to adjust for any over- or under-collection computed in the annual reconciliation. Settlement at ¶ 2.7. On March 31, 2005, the Department approved the Settlement. D.T.E. 03-88A-F (2005) ("Order").

II. The Department Should Not Allow the Proposed Rate Increase Without Evidentiary Hearings.

The Department should not allow the Company's proposed tariff increase without conducting evidentiary proceedings. The Company proposes to change its tariff without going through the proper procedures. Petition, Attachment 6. The Settlement explicitly prohibits such a unilateral change in the per-kilowatt-hour rate for default service. Settlement at ¶ 2.4. The per-kilowatt-hour rate is fixed until the next general distribution rate case, although the Company may propose an adjustment subject to the approval of the Department. *Id*. The Settlement does provide for approval of the annual reconciliation without a full rate case, but the Company's proposed tariff change goes beyond the approved adjustment of over- or under-collection between actual and projected sales volumes.

The Department should not allow the Company to recover costs it has incurred as a result of increased bad debt cost. *See* Petition, Attachment 3. In its order approving the Settlement, the Department explicitly prohibited dollar-for-dollar recovery of bad debt expenses. *Order*, pp. 8-9. The Department stated, "[T]he Department does not allow for dollar-for-dollar recovery; instead we allow a representative level to be placed in rates that remains constant until the next rate case." *Id*. The Company may not change the level of bad debt it recovers without a rate case. 220 C.M.R. § 11.04(10(e). Changes to the formula of a reconciling tariff, including changes in a Department policy that increase rates, must be subject to a hearing before the Department under G. L. c. 164, § 94, to set just and reasonable rates. *Consumers Organization For Fair Energy Equity, Inc. v. D.P.U.*, 368 Mass. 599, 606 (1975) ("[fuel tariff] clauses were designed precisely to avoid [§94] proceedings ***except where changes were being proposed in the clauses themselves***) (emphasis added); *Fitchburg Gas and Electric Light Company*, 440 Mass. 625, 638 (2004). Once the Department establishes an objective formula and a utility appropriately implements the formula, including any reconciliations, the Department should not change the resulting charges outside the safeguards provided by G. L. c. 164, §§ 76 and 94. Here, the Company does more than supply the appropriate numbers for a formula. Rather, it seeks to alter a fixed component of the formula.[1] Such a change requires all the procedural protections and determinations of a rate case.

III. The Company Needs to Provide Further Information on Customer Migration In Order to Recover Costs It Incurs As a Result of That Migration.

The Department should not allow the Company to recover "customer migration" costs without further evidence of the extent and impact of any customer migration. *See* Petition, Attachment 1. The Settlement provides, "at such time that the migration of a Distribution Company's customers from Default Service to competitive supply increases to a significant level as compared to the level at the time the rate adjustments … are implemented …, the rate adjustments included in the Settlement Appendices may be adjusted to reflect the decline in Default Service customers." Settlement at ¶ 2.4. The Company offers no evidence of customer migration. The Company states that a 58% decrease in kWh delivered did not allow it to recover the allowed amount from industrial default service customers. *Petition*, p. 2. The Department should require more than a declaration of fact from the Company before allowing the Company's proposed reconciliation factor by holding an evidentiary hearing to determine the number of customers who have migrated from default to competitive service. G.L. c. 30A, §§ 10, 11(3) and (4).

1 The Company's tariff specifies fixed rates for each class. There is no provision or formula specified for the adjustment of these rates, including any reconciliation adjustment. Although the Company proposes an adjustment to the fixed rates, it has not proposed revised tariff language or, in the alternative, a separate adjustment clause tariff. *See* M.D.T.E. 1084.

IV. Recommendation

The Department should suspend the proposed rates and open an investigation into the propriety of the Company's proposed adjustments and tariff changes.

Respectfully submitted,

THOMAS F. REILLY
ATTORNEY GENERAL

_____/s/_____
By: Colleen McConnell
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